REMARKS

The claims have been amended to more clearly define the invention as disclosed in the written description. In particular, claim 12 has been amended to claim a computer-readable medium containing a computer program product (e.g., program code) enabling a processing device to perform the method of claim 11.

Applicants believe that the above changes answer the Examiner's 37 C.F.R. 1.75(c) objection to claim 12, and the Examiner's 35 U.S.C. 101 rejection of claim 12, and respectfully request withdrawal thereof.

The Examiner has rejected claims 1, 3, 8 and 10 under 35 U.S.C. 101 as being directed to non-statutory subject matter. In particular, the Examiner states:

> "Regarding claims 1, 3, 8 and 10, these claims are for a system. However, all of the elements claimed [identifying means, associating means, selection means and rating means] could be reasonably interpreted in light of the disclosure by an ordinary artisan as being software alone, and thus is directed to functional descriptive material [software per se], which is non-statutory. For instance, the Applicants' specification at page 8, line 31 through page 9, line 5, discloses that the claimed means may be implemented by using a microprocessor coupled to RAM and ROM storing a program. However, drawing Figure 2 suggests a software implementation of the claims 'means'. See In re Warmerdam (CAFC) 31 USPQ2d 1754 at 1759.
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> "In order for software claims to be statutory, they must be claimed in combination with an appropriate medium and/or hardware to establish a statutory category of invention and enable any functionality to be realized. Compare In re Lowry (CAFC) 32 USPQ2d 1031 at 1031,1035 (claim to a data structure stored on a computer readable medium that increases computer efficiency held statutory) and In re Warmerdam (CAFC) 31 USPQ2d 1754 at 1759 (claim to computer having a specific data structure stored in memory held a statutory product-by-process claim) with In re

Warmerdam (CAFC) 31 USPQ2d 1754 at 1760 (claim to a data structure per se held non-statutory)."

Applicants do not dispute that the subject invention **may** relate to a computer program executable on a computer (or processing device) enabling the computer to perform the functions of each of the recited means. However, this is the subject matter of claim 12 now amended. However, the invention as claimed in, for example, claim 1, is not restricted to a software implementation. In particular, for example, the specification, on page 3, lines 22-29, describes a specific hardware implementation of the identifying means 120, i.e., "a monitoring camera connected to a dedicated data processing unit which is arranged to analyze the user's behavior by processing data obtained from the camera". One can easily envision that the associating means and the selection means may each be ASIC's (application specific integrated circuits) arranged to perform the indicated function, that is, also hardware implementations.

Hence, Applicants believe that claims 1, 3, 8 and 10 are indeed statutory under 35 U.S.C. 101 as providing a machine (system) including elements having hardware implementations.

The Examiner has rejected claims 1-3 and 7-12 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,630,963 to Billmaier. The Examiner has further rejected claims 1-4 and 6-12 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 7,162,728 to Bahn. In addition, the Examiner has rejected claims 1, 3 and 8-12 under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent 5,440,351 to Ichino. Moreover, the Examiner has rejected claims 4 and 6 under 35 U.S.C. 1039a) as being unpatentable over Billmaier in view of Bahn. Furthermore, the Examiner has rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Billmaier in view of Bahn, and further in view of U.S. Patent Application Publication No. 2004/0068553 to Kotz et al. The Examiner has additionally rejected claim 5 under 35 U.S.C. 103(a) as being unpatentable over Bahn in view of Kotz et al. Finally, the Examiner has rejected claim 2 and 4-7 under 35 U.S.C. 103(a) as being unpatentable over Ichino in view of U.S. Patent 6,195,707 to Minh.

The Billmaier patent discloses synchronizing a video program from a television broadcast with a secondary audio program, in which a user is able to select and listen to a second audio program from a separate source while watching the video portion of a television broadcast.

As noted in MPEP § 2131, it is well-founded that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California,* 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Further, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.,* 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The Examiner has indicated that Billmaier teaches "identifying means for identifying that the user concurrently uses

a second content of a second type (see disclosure that a user selects a secondary audio program to replace the primary audio program associated with a television transmission, col. 9, lines 1-10 et seq.)."

Applicants submit that the Examiner is mistaken. In particular, Billmaier teaches "a program selector component 906, which allows a user to select a particular secondary audio program 510 to replace the primary audio program 506 associated with the television transmission" (col. 9, lines 1-5). At best, the program selector component acts as means for enabling the execution of the current desire of the user to watch a particular television program while listening to a second content of a second type. However, there is nothing in Billmaier that would enable the system therein to identify how a user behaves when a particular first content is used. In the subject invention, on the other hand, the identifying means may include a camera monitor for recording the actions of the user. This means would then be able to identify that when the user watches a particular television program, the user also listens to a second content of a second type. As such, without the user actually switching to the second content of the second type, the system already has identified that when the user uses a first content of a first type, the user also concurrently uses a second content of a second type.

The Bahn patent discloses a system and method to provide audio enhancements and preferences for interactive television, in which a user is able to, for example, listen to jazz style music

while viewing content on a shopping channel accessed over interactive television.

The Examiner indicates that Bahn teaches "identifying means for identifying that the user concurrently uses a second content of a second type (see disclosure that the system allows a user to customize audio content on interactive television, col. 2, lines 8-10 et seq.)."

Applicants submit that, as with Billmaier, Bahn merely discloses a user interface where the user can first choose the video program to be watched, and then choose an audio program to be listened to while viewing the chosen video program. However, there is no identifying means in Bahn that knows a priori that the user while using a first content of a first type, also concurrently uses a second content of a second type.

The Ichino patent discloses a television with user-selectable radio sound. However, again, as with Billmaier and Bahn, Ichino merely enables the user to first choose the video program to be watched, and then choose an audio program to be listened to while viewing the chosen video program. However, there is no identifying means in Ichino that knows a priori that the user while using a first content of a first type, also concurrently uses a second content of a second type.

The Kotz et al. publication discloses a method and apparatus for personalized content presentation, in which the system dynamically tailors selection of rich content for recommendation to a user wherein the recommendation process

determines a recommendation in accordance with past user selections.

However, Applicants submit that Kotz et al. does not supply that which is missing from either Billmaier or Bahn, i.e., "identifying means for identifying that the user concurrently uses a second content of a second type".

The Minh patent discloses an apparatus for implementing universal resource locator (URL) aliases in a web browser and method therefor, in which, instead of using a particular URL to access a web page, a user is able to define a URL alias which then enables the user to link to the appropriate URL. These URL aliases may then be stored in an alias file.

However, Applicants submit that while Minh may discloses associating a URL alias with a URL, there is no disclosure or suggestion of meta-data comprising information pertaining to said associated first and second content. Furthermore, Applicants submit that Minh does not supply that which is missing from Ichino, i.e., "identifying means for identifying that the user concurrently uses a second content of a second type".

In view of the above, Applicants believe that the subject invention, as claimed, is neither anticipated nor rendered obvious by the prior art, either individually or collectively, and as such, is patentable thereover.

Applicants believe that this application, containing claims 1-12, is now in condition for allowance and such action is respectfully requested.

Respectfully submitted,

by__/Edward W. Goodman/_____
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